

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL L. BELL,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of the Social Security
Administration,

Defendant.

CASE NO. 13-cv-05824 BHS-JRC

REPORT AND RECOMMENDATION
TO DISMISS FOR LACK OF
PROSECUTION

NOTED FOR: June 13, 2014

This matter has been referred to United States Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C. § 636(b)(1) and Local Magistrate Judge Rule MJR 4(a)(4), and as authorized by *Mathews, Secretary of H.E.W. v. Weber*, 423 U.S. 261, 271-72 (1976). This matter is before the Court on this Court's Order to Provide Proof of Service or to Show Cause why this matter should be not dismissed (*see* ECF No. 6).

This Court issued an Order to Provide Proof of Service or to Show Cause why this matter should not be dismissed (ECF No. 6) on March 18, 2014 ordering plaintiff to provide proof of service or show cause by April 25, 2014 why this matter should not be dismissed for lack of prosecution. Plaintiff has failed to file anything in response to this Court's Order.

1 For this reason and because there is no evidence in the record that this case has been served
2 properly, this Court recommends that this action be dismissed without prejudice.

3 BACKGROUND

4 Plaintiff filed his Motion for *In Forma Pauperis* with attached complaint on
5 September 20, 2013 (*see* ECF No. 1). Plaintiff's motion was granted and his complaint was
6 filed on September 26, 2013 (*see* ECF Nos. 2, 3). Plaintiff provided no summonses with his
7 initial filing. Fed. R. Civ. P. 4(m) requires a defendant to be served within 120 days after a
8 complaint is filed. Fed. R. Civ. P. 4(l) requires proof of service to be filed or made to the
9 court. The record does not show that the complaint has been served properly, or that
10 summonses ever were issued.

11 DISCUSSION

12 This Court's March 18, 2014 order (*see* ECF No. 6) informed plaintiff that Fed. R.
13 Civ. P. 4(i) governs service with respect to complaints against the United States and against
14 United States agencies, officers and employees. Plaintiff also was informed that Fed. R. Civ.
15 P. 4(m) requires the court to provide notice to plaintiff before a matter may be dismissed for
16 lack of prosecution, and Rule 4(i)(4) requires the court to allow a reasonable time for
17 plaintiff to cure a failure to serve multiple entities.

18 Plaintiff was given five weeks to provide proof of service or show cause why this
19 Court should not file a Report and Recommendation to dismiss this action. The Court
20 provided notice to plaintiff that this matter may be dismissed for lack of prosecution if
21 plaintiff failed to provide proof of service by April 25, 2014 (*see* ECF No. 6). Although "the
22 court must extend the time for service" if good cause is shown, plaintiff has not filed
23 anything since the Court's Order to Show Cause (*see id.*). *See* Fed. R. Civ. P. 4(m).
24

CONCLUSION

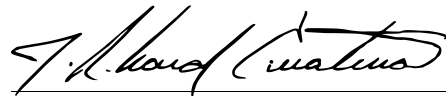
According to Federal Rules of Civil Procedure, if “a defendant is not served within 120 days after the complaint is filed, the court -- on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time” Fed. R. Civ. P. 4(m).

As plaintiff failed to abide by this Court’s order and provide proof of service or show cause why this matter should not be dismissed, the undersigned recommends that this matter be dismissed for lack of prosecution and that the case be closed.

Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of *de novo* review by the district judge. *See* 28 U.S.C. § 636(b)(1)(C). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on June 13, 2014, as noted in the caption.

A copy of this Order is to be mailed to *pro se* plaintiff at the latest address provided to the Court.

Dated this 19th day of May, 2014.



J. Richard Creatura
United States Magistrate Judge